

be applicable. Under these circumstances, when protective payments are made, the entire payment will be made to the protective payee; and when vendor payments are made, at least the greater part of the payment will be through this method. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative. Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, with return to money payment status when adults who refused training, employment, or participation in employment search without good cause either accept training, employment, or employment search or agree to do so. In the case of continuing refusal of the relative to participate, payments will be continued for the children in the home in accordance with this paragraph.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11, 232.12, or 232.13 of this chapter by failing to assign rights to support or cooperate in determining paternity, securing support, or identifying and providing information to assist the State in pursuing third party liability for medical services, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases, the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11, 232.12, and 232.13 of this chapter. However, if after making reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments to the sanctioned caretaker relative on behalf of the remaining members of the assistance unit.

(14) If the plan provides for protective, vendor, or two-party payments:

(i) The State may use any combination of protective, vendor, or two-party payments (at the request of the recipient),

(ii) The request must be in writing from the recipient to whom payment would otherwise be made in an unrestricted manner and must be recorded or retained in the case file, and

(iii) The restriction will be discontinued promptly upon the written request of the recipient who initiated it.

(b) *Federal financial participation.* Federal financial participation is available in payments which otherwise qualify as money payments with respect to an eligible dependent child, but which are made as protective, vendor or two-party payments under this section. Payrolls must identify protective, vendor, or two-party payments either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll. The payment must be supported by an authorization of award through amendment of an existing authorization document for each case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official, showing the name of each eligible child and relative, the amount of payment authorized and the name of the protective, vendor or two-party payee.

[37 FR 9025, May 4, 1972, as amended at 37 FR 12202, June 20, 1972; 45 FR 20480, Mar. 28, 1980; 47 FR 5682, Feb. 5, 1982; 49 FR 35603, Sept. 10, 1984; 51 FR 9206, Mar. 18, 1986; 54 FR 42244, Oct. 13, 1989; 56 FR 8932, Mar. 4, 1991; 57 FR 30160, July 8, 1992]

§ 234.70 Protective payments for the aged, blind, or disabled.

(a) *State plan requirements.* If a State plan for OAA, AB, APTD, or AABD under the Social Security Act includes provisions for protective payments, the State plan must provide that:

(1) Methods will be in effect to determine that needy individuals have, by reason of physical or mental condition, such inability to manage funds that making payment to them would be contrary to their welfare; such methods to include medical or psychological

evaluations, or other reports of physical or mental conditions including observation of gross conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss.

(2) There will be responsibility to assure referral to social services for appropriate action to protect recipients where problems and needs for services and care of the recipients are manifestly beyond the ability of the protective payee to handle. (See paragraph (a)(5) of this section.)

(3) Standards will be established for selection of protective payees who are interested in or concerned with the individual's welfare, to act for the individual in receiving and managing assistance, with the selection of a protective payee being made by the individual, or with his participation and consent, to the extent possible. If it is in the best interest of the individual for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families or for the disabled or aged group of which the recipient is a member; and such staff of the public welfare department will be utilized only to the extent that the department has adequate staff for this purpose. The selection will not include: The executive head of the agency administering public assistance; the person determining financial eligibility for the individual; special investigative or resource staff, or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods or services dealing directly with the recipient—such as the proprietor, administrator or fiscal agent of a nursing home, or social care, medical or non-medical institution, except for the superintendent of a public institution for mental diseases or a public institution for the mentally retarded, or the designee of such superintendent, when no other suitable protective payee can be found and there are appropriate staff available to assist the superintendent in carrying out the protective payment function.

(4) Protective payments will be made only in cases in which the assistance payment, with other available income, meets all the needs of the individual, using the State's standards for assistance for the pertinent program, not standards for protective payment cases only.

(5) The agency will undertake and continue special efforts to protect the welfare of such individuals and to improve, to the extent possible, their capacity for self-care and to manage funds.

(6) Reconsideration of the need for protective payments and the way in which a protective payee's responsibilities are carried out will be as frequent as indicated by the individual's circumstances and at least every 6 months.

(7) Provision will be made for appropriate termination of protective payments as follows:

(i) When individuals are considered able to manage funds in their best interest, there will be a return to money payment status.

(ii) When a judicial appointment of a guardian or other legal representative appears to serve the best interest of the individual, such appointment will be sought and the protective payment will terminate when the appointment has been made.

(8) Opportunity for a fair hearing will be given to any individual claiming assistance in relation to the determination that a protective payment should be made or continued, and in relation to the payee selected.

(b) *Federal financial participation.* Federal financial participation is available for payments, which otherwise qualify as money payments with respect to a needy individual, but which are made to a protective payee under paragraph (a)(3) of this section. The payment must be supported by an authorization of award through amendment of an existing authorization document for such case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official showing the name of each eligible individual, the amount of payment

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authorized and the name of the protective payee. Payrolls must identify protective payment cases either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll.

[34 FR 1323, Jan. 28, 1969]

§ 234.75 Rent payments to public housing agencies.

At the option of a State, if its plan approved under title I, X, XIV, or XVI of the Social Security Act so provides, Federal financial participation under such title is available in rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of OAA, AB, APTD, or AABD. Such Federal financial participation is available in rent payments only to the extent that they do not exceed the amount included for rent under the State's standard of assistance or the amount of rent due under applicable law, whichever is less.

[38 FR 26380, Sept. 20, 1973]

§ 234.120 Federal financial participation.

Federal financial participation is available in assistance payments made under a State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act to any family or individual for periods beginning with the month in which they meet all eligibility conditions under the plan and in which an application has been received by the agency. Such assistance payments include:

(a) Money payments (titles I, IV-A, X, XIV, and XVI, see § 234.11 of this chapter);

(b) Protective and vendor payments for dependent children (title IV-A, see § 234.60 of this chapter);

(c) Protective payments for the aged, blind, or disabled (titles I, X, XIV, and XVI, see § 234.70 of this chapter);

(d) AFDC foster care payments (title IV-A, see § 233.110 of this chapter);

(e) Vendor payments for institutional services in intermediate care facilities (titles I, X, XIV, and XVI), but only in a State that did not, as of January 1, 1972, have an approved plan under title XIX of the act, and only until such

State has such a plan in effect (see § 234.130 of this chapter);

(f) Emergency assistance to needy families with children (title IV-A, see § 233.120 of this chapter);

(g) Vendor payments for home repairs (titles I, IV-A, X, XIV, and XVI, see § 233.20(c) of this chapter); and

(h) Rent payments to public housing agencies (titles I, X, XIV, and XVI, see § 234.75 of this chapter).

[38 FR 26380, Sept. 20, 1973]

§ 234.130 Assistance in the form of institutional services in intermediate care facilities.

(a) *Applicability and State plan requirements.* A State which, on January 1, 1972, did not have in effect a State plan approved under title XIX of the Social Security Act may provide assistance under title I, X, XIV, or XVI of the Act in the form of institutional services in intermediate care facilities as authorized under title XI of the Act, until the first day of the first month (occurring after January 1, 1972) that such State does have in effect a State plan approved under title XIX of the Act. In any State which may provide such assistance as authorized under title XI of the Act, a State plan under title I, X, XIV, or XVI of the Act which includes such assistance must:

(1) Provide that such benefits will be provided only to individuals who:

(i) Are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to receive assistance, under the State plan, in the form of money payments; and

(ii) Because of their physical or mental condition (or both) require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities; and

(iii) Do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title XIX) is designed to provide.

(2) Provide that, in determining financial eligibility for benefits in the form of institutional services in intermediate care facilities, available income will be applied, first for personal